

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**RUSSELL ZINTER, et al;  
Plaintiffs,**

**vs.**

**CHIEF JOSEPH SALVAGGIO, et al;  
Defendants.**

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**CIVIL NO. SA-18-CV-680-RCL**

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**PLAINTIFFS' NOTICE OF INTERLOCUTORY CROSS-APPEAL**

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TO THE HONORABLE UNITED STATES DISTRICT JUDGE ROYCE C. LAMBERTH:

Plaintiffs, MARK BROWN, JAMES SPRINGER, RUSSELL ZINTER, DAVID BAILEY, JUAN GONZALES, JAMES MEAD, BRIAN HOWD, JACK MILLER, THERESA RICHARD, GREGORY GARDINER, KEVIN EGAN, JONATHAN GREEN, and JASON GREEN, individually (hereinafter referred as **"Plaintiffs"** in the above entitled and number cause) files this *Plaintiffs' Notice of Interlocutory Cross-Appeal*, notifying the trial court and the parties of this cross-appeal of the trial court's dismissal of the following claims on the basis of qualified immunity (ECF 201, 202):

- MARK BROWN: Count 1 (False Arrest), Court 3 (Excessive Force), Count 4 (Seizure of Property)
- JAMES SPRINGER: Count 6 (Unlawful Seizure), Count 7 (Retaliation), Count 8 (Excessive Force), Count 9 (Seizure of Property), Count 11 (Unlawful Seizure), Count 12 (Retaliation)
- RUSSELL ZINTER: Count 6 (Unlawful Seizure), Count 7 (Retaliation), Count 9 (Seizure of Property)
- DAVID BAILEY: Count 9 (Seizure of Property)
- JUAN GONZALES: Count 8 (Excessive Force), Count 9 (Seizure of Property), Count 11 (Unlawful Seizure), Count 11 (Seizure of Property), Count 12 (Retaliation)
- JAMES MEAD: Count 8 (Excessive Force), Count 9 (Seizure of Property), Count 11 (Unlawful Seizure), Count 12 (Retaliation)

- BRIAN HOWD: Count 11 (Unlawful Seizure), Count 11 (Seizure of Property), Count 12 (Retaliation)
- JACK MILLER: Count 12 (Retaliation)
- THERESA RICHARD: Count 11 (Unlawful Seizure), Count 11 (Seizure of Property), Count 12 (Retaliation)
- GREGORY GARDINER: Count 11 (Unlawful Seizure), Count 11 (Seizure of Property), Count 12 (Retaliation)
- KEVIN EGAN: Count 11 (Unlawful Seizure), Count 11 (Seizure of Property), Count 12 (Retaliation), Count 13 (Excessive Force and Refusal to Treat)
- JONATHAN GREEN: Count 11 (Seizure of Property), Count 13 (Excessive Force)
- JASON GREEN: Count 11 (Seizure of Property), Count 13 (Excessive Force)

## I.

Plaintiffs asserted multiple constitutional violations after Leon Valley and its police officers. Plaintiffs filed this lawsuit asserting multiple constitutional violations against Defendants due to their intentional and targeted and unconstitutional conduct on June 14, 2018, June 18, 2018, and June 23, 2018, which was the result of Defendants' disdain of law-abiding citizens filming police and government activity from public spaces at Leon Valley City Hall. (ECF 87).

## II.

Plaintiffs filed their *Plaintiffs' Partial Motion for Summary Judgment* (ECF 153-1) on February 24, 2022, and their *Reply Brief (to Defendant Officers) in Support of Plaintiffs' Motion for Summary Judgment* (ECF 182) on March 17, 2022. Plaintiffs also filed their *Plaintiffs' Response to Defendant Officers' Motion for Summary Judgment* (ECF 168-1) on March 10, 2022. On July 7, 2022, United States Senior District Judge Royce C. Lambert issued his orders denying Plaintiffs' *Partial Motion for Summary Judgment* and then dismissed several plaintiffs, officers, and the City of Leon Valley from this lawsuit. (ECF 196, 197, 200, 201).

On August 8, 2022, Defendant Officers filed *Defendant Officers' Notice of Interlocutory Appeal*. (ECF 210).

### III.

Plaintiffs now seek an interlocutory cross-appeal based on pendent appellate jurisdiction. The Fifth Circuit Court of Appeals recognizes that “[p]endent appellate jurisdiction may be proper where . . . the court will decide some issue in the properly brought interlocutory appeal that necessarily disposes of the pendent claim . . . or . . . the claims involve precisely the same facts and elements.” *Escobar v. Montee*, 895 F.3d 387, 392-93 (5th Cir. 2018).

Since Defendant Officers are seeking a review of an order related to officer conduct during the span of three days against Plaintiffs, then Plaintiffs are seeking a review of the same period, with the same facts, in hopes of resolving their dispute. The claims at issue—the ones that Defendant Officers seek to resolve—involve precisely the same facts and elements of the pendent claim that Plaintiffs are now requesting review of. Since the Fifth Circuit Court of Appeals is being asked to review circumstances that are so intertwined with what Plaintiffs are now seeking review of, Plaintiffs believe they have a good faith basis to file this notice.

### IV.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, MARK BROWN, JAMES SPRINGER, RUSSELL ZINTER, DAVID BAILEY, JUAN GONZALES, JAMES MEAD, BRIAN HOWD, JACK MILLER, THERESA RICHARD, GREGORY GARDINER, KEVIN EGAN, JONATHAN GREEN, and JASON GREEN, file this Interlocutory Cross-Appeal for purposes of obtaining appellate review of the trial court’s denial of their *Partial Motion for Summary Judgment* (ECF 153-1) and granting in part of Defendants’ Motion for Summary Judgment (ECF 149) on the basis that these officers have qualified immunity from suit and liability despite having fair notice of Plaintiffs’ clearly established rights, but pursuant to City policy, violated them anyway.

Respectfully Submitted,

**GRABLE GRIMSHAW PLLC**

*/s/ Brandon J. Grable*

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**COUNSEL FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I, Brandon J. Grable, hereby certify that a copy of the foregoing has been served on all counsel of record by e-mail and/or facsimile and/or placing a copy of the same in the United States mail, postage pre-paid and addressed, on this 8th day of August 2022.

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/s/ Brandon J. Grable

Brandon J. Grable